

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

STATE OF NEW MEXICO, ex rel.,
State Engineer,

Plaintiff,

CV 69-7941-BB-ACE

v.

RIO CHAMA STREAM SYSTEM
Section 1: Mainstream

ROMAN ARAGON, et al.,

Defendants.

**ACEQUIA DE CHAMITA'S RESPONSE TO
THE MOTIONS TO RECONSIDER
(DOCS 9949 AND 9951) BY DAVID ORTIZ**

The Acequia de Chamita (hereinafter also "Acequia"), by and through its undersigned counsel files this Response to the Motions to Reconsider (docs. 9949 and 9951) by David Ortiz. The Acequia de Chamita is filing this Response to make it clear why the Acequia argued at the priority date trial in 1996 for a priority date of 1600 and continues to support that priority date as recommended by the Special Master. (Doc. No. 9546).

The said Acequia, through the testimony of its commissioners and the arguments of its attorney, argued for a priority date of 1600 based upon the research, report, and testimony of its expert historian Dr. Stanley Hordes. Additionally prior to the priority date trial, the Acequias' expert, Dr. Hordes and the Court's expert, Dr. John Baxter, agreed upon and stipulated that the settlement at Chamita was in the year 1600. (See Order Adopting Stipulation, filed November 17, 1995, Doc. No. 4380). The Acequia and its attorney were constrained by this evidence to argue for a priority date of 1600.

The pertinent stipulated facts as reported in the Special Master's Report (Doc. No. 9546) were, in part, that:

“1. In 1598 Juan de Oñate led a large expedition out of San Bartolomé in present Chihuahua to establish a permanent settlement in New Mexico. In this endeavor he was accompanied by 10 Franciscan friars and 129 citizen-soldiers and their families.

2. The Oñate expedition arrived at present San Juan Pueblo¹ on July 11, 1598.

3. With the assistance of 1,500 Pueblo Indians, Oñate initiated a project to build an acequia on the east bank of the Rio Grande.

4. In 1600 Spanish settlers moved to a new settlement across the Rio Grande to a location directly west of the Pueblo of San Juan, north of the Rio Chama, at the partially abandoned Pueblo of Yuque-Yunque, which the Spanish authorities named “San Gabriel”.

5. The Spanish settlers promptly established an irrigation system at San Gabriel, constructing an acequia taken from the waters of the Rio Chama. This acequia irrigated wheat, barley, corn and other garden crops. San Gabriel was located in the area now known as Chamita.” (Doc. 9546, p. 3)

The Acequia de Chamita was fully informed of the opinions of its expert historian, and the priority date of 1600 that was presented to the Special Master. In fact, the Acequia, through two of its then commissioners, Juan D. Archuleta and Richard M. Salazar, presented evidence at the trial to support a priority date of 1600 (See attached affidavit of Alex Sisneros, Exhibit “A” and affidavit of Richard M. Salazar, Exhibit “B”).

¹ The Pueblo of San Juan is now known as Ohkay Owingeh. This report, however, will refer to the Pueblo by its previous name to avoid confusion.

Prior to the 1996 priority date trial, the Acequia de Chamita and other acequias, signed a Waiver of Conflict of Interest which allowed the undersigned trial attorney to represent the Acequia de Chamita and other acequias at the trial of their priority dates (See Exhibits A and B attached hereto).

Because the Special Master's Report (Doc. No. 9456, filed December 16, 2009) found in favor of a 1600 priority date for the Acequia de Chamita, as it had argued, its counsel moved the Court to adopt the Special Master's Report and Recommendation by the original deadline of January 7, 2010 (Doc. No. 9556). The Court later on January 12, 2010 granted an extension of time until February 20, 2010 to file objections to or motions to adopt or modify the aforesaid Special Master's Report (Doc. No. 9559). Several pro se parties including Mr. Ortiz filed their objections to the Special Master's Report within that extended period of time.

A meeting was held between the Acequia de Chamita commissioners and their attorney and other members of the acequia on January 26, 2010 to discuss the said Special Master's Report, the action taken by the counsel for the Acequia, and the extended deadline to object to the said Special Master's Report. A subsequent meeting was held on February 4, 2010 with the Acequia de Chamita commissioners where they voted in favor of accepting the Special Master's Recommendation of a 1600 priority date and ratified the attorney's motion made on behalf of the Acequia de Chamita to adopt the Special Master's Report. (See Exhibits A and B hereto).

Given that there was an extension granted to file objections to the said Special Master's Report, that Mr. Ortiz and other parties were able to and did file objections to the said Report including additional evidence, and that the Acequia de Chamita formally

approved of the Special Master's Report and ratified its counsel's motion to adopt said Report, there is no prejudice to Mr. Ortiz or his ability to argue his objection on the merits to the said Special Master's Report as Mr. Ortiz appears to argue.

Simply put, Mr. Ortiz does not agree with the original decision of the Acequia de Chamita, its expert historian, and its attorney to argue for a 1600 priority date. However, given the stipulated historical settlement facts by the Court's historian, Dr. John Baxter, and the Acequia's historian, Dr. Stanley Hordes, it would have been unlikely for the Special Master to determine that the priority date for the Acequia de Chamita should be earlier than 1600.

The Acequia de Chamita has presented this Response in order to explain on the record its consistent decision to argue for a priority date of 1600. Mr. Ortiz' slanderous statements against the other two Acequia commissioners and the Acequia's counsel are immaterial to the merits of his objection to the said Special Master's Report. Based upon all of the evidence, especially the reports and opinions of the Acequia's expert, Dr. Stanley Hordes, the Stipulation agreed to by both Dr. Hordes and the Court's historian, Dr. Baxter, the Acequia urges the Court to deny Mr. Ortiz' Motions for Reconsideration and to adopt the Special Masters Report (Doc. No. 9546).

Respectfully submitted,

/s/ Electronically signed 9/23/10
Fred J. Waltz
Attorney for Acequia de Chamita
214 B Kit Carson Rd.
Taos, New Mexico 87571
(575) 758-0407

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of September, 2010, I filed the foregoing electronically through the CM/ECF system which caused the parties on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail. Further I certify that a true copy of the foregoing pleading was mailed to David Ortiz, pro se, at P.O. Box 1082, San Juan Pueblo, New Mexico 87566.

/s/ Electronically signed 9/23/10
Fred J. Waltz

AFFIDAVIT

STATE OF NEW MEXICO)
)SS.
COUNTY OF RIO ARriba)

ALEX SISNEROS, being first duly sworn upon his oath, deposes and states the following:

1. I am presently a commissioner, and the President of the Acequia de Chamita.
2. I am aware of the trial of the priority date for the Acequia de Chamita which occurred in 1996. Prior to that trial the Acequia's three commissioners A.B. Valdez, Richard M. Salazar, and Juan D. Archuleta agreed to the representation of our Acequia by attorney Fred J. Waltz and signed a Waiver of Conflict of Interest, a copy of which is attached hereto.
3. Richard M. Salazar, Juan D. Archuleta, and A.B. Valdez were commissioners of the Acequia de Chamita at the time of that trial.
4. In my opinion we have been kept informed of that trial and all relevant events subsequent to that trial, including the opinions of our historian, Dr. Stanley Hordes, and our attorney, Fred J. Waltz.
5. The Acequia de Chamita, through its commissioners Juan D. Archuleta and Richard M. Salazar were present at the priority date trial in 1996 and they presented evidence as to the priority date of the Acequia, which our historian Dr. Stanley B. Hordes testified was 1600.
6. After the decision of the Special Master, Vickie Gabin, on December 16, 2009 there was a meeting on February 4, 2010 of the commissioners of the Acequia de Chamita where we voted in favor of the court's adoption of the Special Master's report on our priority date of 1600 and ratified our attorney's motion made on behalf of the Acequia de Chamita to adopt the Special Master's Report. All three commissioners were notified and knew of this meeting on

Exhibit "A"


February 4, 2010. There were two votes in favor by Alex Sisneros and Richard M. Salazar. The third commissioner, David Ortiz, who was invited and knew of this meeting, did not attend or vote on this matter. Because a majority of commissioners were present and voted in the affirmative, the motion passed to support and not appeal the Special Master's report on our priority date.

7. At the said meeting on February 4, 2010 the Acequia de Chamita's Commissioners agreed with the priority date of 1600 because that is the date our historian, Dr. Stanley Hordes, and the Court's historian, Dr. John Baxter, agreed was the date of first settlement of the Chamita area.

8. The Acequia de Chamita also held a special membership meeting on March 16, 2010, where our historian, Dr. Stanley Hordes was present to explain why he agreed both in 1996 and now that the most appropriate priority date for the Acequia de Chamita is 1600.

9. We believe that most of the parcientes present at the special meeting agreed with Dr. Hordes' opinion and the action we took as commissioners to agree with and not appeal the Special Master's report on our acequia's priority date.

10. Further Affiant sayeth naught.


Alex Sisneros

SUBSCRIBED AND SWORN to before me this 22nd day of September, 2010, by

Alex Sisneros.


NOTARY PUBLIC

MY COMMISSION EXPIRES:

3/23/2014
(SEAL)

M E M O R A N D U M

DATE: September 27, 1994
TO: All Rio de Chama Acequias Association Commissioners
FROM: FRED VIGIL

RE: Waiver of conflict of Interest
CC: Rio de Chama Acequias Association, P.O. Box 687
Medanales, New Mexico 87548

I would like to request that you sign this conflict of interest waiver so that our attorney Fred Waltz can continue representing all acequias in the adjudication suit. This waiver has been requested by Judge Gabin in the Rio de Chama Adjudication Suit. Since the individual acequias do not have the financial means to hire their own attorney and other experts, RCAA can represent everyone and we can continue working in a united manner.

Please return both the Waiver of Conflict of Interest and the signature page as soon as possible, but not later than **October 10, 1994**. Please have all three commissioners sign the form and forward to the above address.

Thank you for your attention in this regards. If you have any questions, please call, I can be reached at 753-4519. -

WAIVER OF CONFLICT OF INTEREST

WHEREAS, the below listed twenty-nine (29) Acequias have joined to form the Rio Chama Acequia Association for the purpose of protecting their rights and the common right of their parcientes and correcting errors in the adjudication of water rights in Section I of the Rio Chama Adjudication suit; and

WHEREAS, each of the said acequias have been and are financially unable to afford legal counsel, experts, and expenses and the State of New Mexico, State Engineer, cannot provide legal representation to the acequias in this adjudication; and

WHEREAS, there are issues of common concern to all twenty-nine (29) Acequias, namely the correct adjudication of priority dates, duty of water, hydrographic survey, and conflicting or potentially conflicting claims of other parties in this adjudication; and

WHEREAS, each of the twenty-nine (29) acequias have consulted with their attorney in this case, Fred J. Waltz, regarding the implications of common representation and the advantages and risks involved;

NOW THEREFORE, each of the twenty-nine (29) acequias, by and through their undersigned Commissioners hereby consent to the representation of the aforementioned issues of common concern by common counsel, namely, Fred J. Waltz, and waive any apparent or actual conflict of interest in this regard.

AGEQUIA DE CHAMITA, by

H. B. Vail
Richard M. Salazar
Juan D. Archuleta

Date:

9-27-94
10-12-94
10-12-94

AFFIDAVIT

STATE OF NEW MEXICO)
)SS.
 COUNTY OF RIO ARriba)

RICHARD M. SALAZAR, being first duly sworn upon his oath, deposes and states the following:

1. I am presently a commissioner of the Acequia de Chamita.
2. I am aware of the trial of the priority date for the Acequia de Chamita which occurred in 1996. Prior to that trial the Acequia's three commissioners A.B. Valdez, Richard M. Salazar, and Juan D. Archuleta agreed to the representation of our Acequia by attorney Fred J. Waltz and signed a Waiver of Conflict of Interest, a copy of which is attached hereto.
3. I, Juan D. Archuleta, and A.B. Valdez were commissioners of the Acequia de Chamita at the time of that trial.
4. In my opinion we have been kept informed of that trial and all relevant events subsequent to that trial, including the opinions of our historian, Dr. Stanley Hordes, and our attorney, Fred J. Waltz.
5. The Acequia de Chamita, through its commissioners Juan D. Archuleta and Richard M. Salazar were present at the priority date trial in 1996 and we presented evidence as to the priority date of the Acequia, which our historian Dr. Stanley B. Hordes testified was 1600.
6. After the decision of the Special Master, Vickie Gabin, on December 16, 2009 there was a meeting on February 4, 2010 of the commissioners of the Acequia de Chamita where we voted in favor of the court's adoption of the Special Master's report on our priority date of 1600 and ratified our attorney's motion made on behalf of the

Exhibit "B"

Acequia de Chamita to adopt the Special Master's Report. All three commissioners were notified and knew of this meeting on February 4, 2010. There were two votes in favor by Alex Sisneros and Richard M. Salazar. The third commissioner, David Ortiz, who was invited and knew of this meeting, did not attend or vote on this matter. Because a majority of commissioners were present and voted in the affirmative, the motion passed to support and not appeal the Special Master's report on our priority date.

7. At the said meeting on February 4, 2010 the Acequia de Chamita's Commissioners agreed with the priority date of 1600 because that is the date our historian, Dr. Stanley Hordes, and the Court's historian, Dr. John Baxter, agreed was the date of first settlement of the Chamita area.

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9. We believe that most of the parcientes present at the special meeting agreed with Dr. Hordes' opinion and the action we took as commissioners to agree with and not appeal the Special Master's report on our acequia's priority date.

10. Further Affiant sayeth naught.


Richard M. Salazar

SUBSCRIBED AND SWORN to before me this 22nd day of September, 2010,
by Richard M. Salazar.


NOTARY PUBLIC

MY COMMISSION EXPIRES:

3/23/2014
(SEAL)

M E M O R A N D U M

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Please return both the Waiver of Conflict of Interest and the signature page as soon as possible, but not later than October 10, 1994. Please have all three commissioners sign the form and forward to the above address.

Thank you for your attention in this regards. If you have any questions, please call, I can be reached at 753-4519. -

WAIVER OF CONFLICT OF INTEREST

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WHEREAS, each of the said acequias have been and are financially unable to afford legal counsel, experts, and expenses and the State of New Mexico, State Engineer, cannot provide legal representation to the acequias in this adjudication; and

WHEREAS, there are issues of common concern to all twenty-nine (29) Acequias, namely the correct adjudication of priority dates, duty of water, hydrographic survey, and conflicting or potentially conflicting claims of other parties in this adjudication; and

WHEREAS, each of the twenty-nine (29) acequias have consulted with their attorney in this case, Fred J. Waltz, regarding the implications of common representation and the advantages and risks involved;

NOW THEREFORE, each of the twenty-nine (29) acequias, by and through their undersigned Commissioners hereby consent to the representation of the aforementioned issues of common concern by common counsel, namely, Fred J. Waltz, and waive any apparent or actual conflict of interest in this regard.

AGEQUIA DE CHAMITA, by

H. V. Vail
Richard M. Salazar
Juan P. Archuleta

Date:

9-24-94
10-12-94
10-12-94